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**STATE OF MP
VS.
MULCHAND**

**High Court of Madhya Pradesh,
Writ Petition No.5594/2016**

ORDER OF 8 MARCH 2018

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Writ Petition No.5594/2016

(The State of Madhya Pradesh & another

Versus

Mulchand s/o Jhapria and another)

Indore, Dated 08.03.2018

Shri Vivek Patwa, learned Government Advocate for the petitioner / State of Madhya Pradesh.

Shri Pratyush Mishra, learned counsel for respondent No.1.

Heard on the question of admission.

ORDER

By this writ petition under Article 226 of the Constitution of India, the petitioner / State of Madhya Pradesh is challenging the order dated 29.09.2015 (Annexure P/7) passed by the learned Chairman, Grievance Redressal Authority, Indore in Case No.GRA/85/2014, whereby learned Authority has allowed the application filed by respondent No.1 for grant of benefit of Madhya Pradesh State Rehabilitation & Resettlement Policy (R & R Policy) and directed the petitioners to allot two hectare land as per rules or lands owned by respondent No.1 (which was acquired for resettlement for oustee families of submergence of the dam for their residential plots, and lands for land against acquired for dam purpose to respondent No.1).

2. The impugned order is assailed on the ground that respondent No.1 has been treated as submergence

affected person, whereas the land acquired from him was not coming under submergence of Sardar Sarovar Dam Project, but has been used for resettlement of oustees of Sardar Sarovar Dam Project. Thus, the order passed by the learned Grievance Redressal Authority is against the Narmada Water Disputes Tribunal Award, R & R Policy framed by the State of Madhya Pradesh and law laid down by the Apex Court.

3. Per contra, learned counsel for respondent No.1 has submitted that application was filed before the learned Grievance Redressal Authority on 22.01.2014 for granting the rights, as per the R & R Policy, as entire land of 1.153 hector situated at Survey No.330/2, village Kasrawad, District Barwani (MP) of respondent No.1 was acquired vide notification published on 21st December, 2001 under Section 4 of Land Acquisition Act, 1894 for rehabilitation of displaced persons. After death of father of respondent No.1, land compensation was granted to him. The agriculture land of respondent No.1 is adjacent to City Barwani.

4. As per Clause 4.3 of R & R Policy, minimum two hectare of land (of the choice of farmer) required to be with farmer for livelihood. In the present case, respondent No.1 became landless because of the acquisition of his agricultural land.

5. He further submitted that no document was produced by the petitioner – State of Madhya Pradesh before the learned Authority or before this Court to show that the land of other marginalized farmers was not acquired by them for this particular colony and the land of respondent No.1 is in between the colony.

6. The Hon'ble Supreme Court in the case of **Narmada Bachao Andolan v. State of Madhya Pradesh & others**, Civil Appeal No.2082/2011 through an order dated **11.05.2011** held the meaning and limitation of the phrase “as far as possible” the same is quoted as under: -

“AS FAR AS POSSIBLE:

36. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather, connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard and fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the Court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide: **Iridium India Telecom Ltd. v. Motorola Inc.**, AIR 2005 SC 514; and **High Court of Judicature for Rajasthan v. Veena Verma & Anr.**, AIR 2009 SC 2938).

37. Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.”

7. It is not in dispute that notification under Section 4 of the Land Acquisition Act, 1894 was issued on

07.09.2001 that is much prior to 2003 amendment of the definition clause in the R & R Policy. The aforesaid amendment came into force with effect from 14/21.08.2003. The amended provision of 2003 made in R & R Policy is not applicable in the present case of respondent No.1.

8. The Narmada Water Disputes Tribunal Award as well as the R & R Policy granted the rights of two hectares of agriculture land to each affected person. The learned Grievance Redressal Authority considering the fact that the land was acquired much prior to the date of amendment, for resettlement of the oustee families of submergence of the dam for their residential plots, and lands for land against acquired for dam purpose, and therefore, directed that the Commissioner, Narmada Valley Development Authority, Indore shall arrange two hector land as per rules; and further directed to pass an appropriate order within a period of six months from the date of order.

9. Shri Vivek Patwa, learned Government Advocate for the petitioner / State of Madhya Pradesh has drawn our attention to definition of 'oustee' as defined under the Narmada Water Disputes Tribunal award and submitted that a person falls under the definition of 'oustee' if he loses his source of livelihood or

residence. The provision of the NWDT Award is binding on all the participatory States of the Project though the party States including the petitioner / State of Madhya Pradesh were at liberty to further liberalize R & R benefits in favour of the displaced families, as per their potentials and constrains. The State of Madhya Pradesh has also framed R & R Policy for the purpose of rehabilitation and resettlement of the oustees of various projects vide Annexure P/2.

10. He further submitted that the land of respondent No.1 is not affected by submergence due to Sardar Sarovar Dam Project, but it has been acquired for development of resettlement site for the oustees of Sardar Sarovar Dam Project. He is not complying with the conditions requisite for a displaced family, and therefore, he is not entitled for rehabilitation benefits except compensation of land of which about 80% amount has been received by him.

11. It is also submitted that amended policy will be applicable in the present case. The impugned order is contrary to the provisions of R & R Policy of the State Government, which provides that "as far as possible", land of small farmer will not be acquired. The grievance of the petitioner is that the impugned order has been passed by the learned Grievance Redressal Authority contrary to the provisions of Clause 4.3 of

the Policy dated 14.08.2000. Learned Authority failed to see that the land of the petitioner was acquired for resettlement of oustees of the Sardar Sarovar Dam Project and does not come under submergence due to Sardar Sarovar Dam Project. As per provisions of Clause 4.3 of R & R Policy, only compensation is payable.

12. As per order dated 14/21.08.2003 of the Government of Madhya Pradesh, R & R Policy, which was issued in the year 1989, was amended. The land of respondent No.1 was acquired in 2001. The learned Grievance Redressal Authority, considering the fact that land of respondent No.1 being the marginal / small former, could not be acquired by acquisition under the provisions of Land Acquisition Act, 1894 and he should not be deprived of his lands by acquisition.

13. The learned Grievance Redressal Authority gave the following findings: -

"The Deputy Director NVDA filed the copy of Order Case No.2/180/27/2/87/Part 944 Bhopal Dated 14/21/08/2003. It is also admitted that by order No.2/180/27/2/87/ Part 944 / Bhopal dated 14/21/08/2003 issued by MP State, Narmada Valley Development Department, as mentioned as verbatim above, (filed by the Deputy Director NVDA Indore) do not affect the above provisions of the State Policy. So, as admitted, the lands of applicant being the marginal / small former, could not be acquired by acquisition under provisions of Land Acquisition Act, 1894 and he should not be deprived his lands by acquisition. On violation of the provisions of State

beneficial liberalized policy regarding rehabilitation of displaced families affected families affected from Narmada Projects. The Narmada Valley Development Authority is bound to recoup the losses caused to the applicant. So for the other rehabilitation benefits and grants which are available to the other displaced families affected for Sardar Sarovar Project are only applicable to oustee who are one year prior to the publication of notification for proposed acquisition of the land / abadi ordinarily residing, working for gain or doing agriculture in area of submergence. It is admitted that by notification published on 07.09.2001 under Section 4 Land Acquisition Act, 1894, the agricultural lands up to the height of 455 feet were proposed for Sardar Sarovar Dam Submergence Project. As consequence the applicant was residing and cultivating lands acquired in Village Kasrawad one year prior to the publication of notification.

In the light of detailed legal and factual discussion, for violation of the Rules contained in State Policy regarding Rehabilitation of displaced families of Narmada Projects (Amended up to August, 2003) September 1989 that no land belonging to members belonging to (1) marginal formers having one hector irrigated or half hector irrigated land or less agriculture land (2) and small formers having two hector unirrigated or one hector irrigated land or less land, the land area 1.153 hector owned by the applicant was acquired for resettlement for oustee families of submergence of the dam for their residential plots, and lands for land against acquired for dam purpose, it is hereby directed that the Commissioner Narmada Valley Development Authority Indore shall arrange two hector land as per rules as mentioned earlier or lands owned by the applicant which was acquired for resettlement for oustee families of submergence of the dam for their residential plots, and lands for land against acquired for dam purpose to the applicant, within six months from the date of order."

14. On due consideration of the fact that the land of respondent No.1 was acquired in 2001 for resettlement of oustee families of submergence of the dam for their residential plots, and therefore, amendment in R & R

Policy (which was made August, 2003) will not be applicable and the learned Grievance Redressal Authority rightly allowed the prayer of respondent No.1 and directed the State of Madhya Pradesh to grant benefit of R & R Policy within six months from the date of the order and has not committed any legal error.

15. No case to interfere with well reasoned order dated 29.09.2015 (Annexure P/7) passed by the learned Chairman, Grievance Redressal Authority, Indore in Case No.GRA/85/2014, as prayed for, is made out; nor the impugned order has been passed in violation of the R & R Policy made applicable in the case of respondent No.1.

16. Writ Petition No.5594/2016 filed by the State of Madhya Pradesh has no merit and is accordingly dismissed.

(P.K. Jaiswal)
Judge

(Virender Singh)
Judge